

**Presentment Date and Time:**  
**October 12, 2000, at 10:00 a.m.**

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UNITED STATE BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
RANDALL'S ISLAND FAMILY GOLF	:	Case Nos. 00-B-41065 through 00-B-
CENTER, INC., et al.,	:	41196 (SMB)
	:	
Debtors.	:	Jointly Administered

**OBJECTION OF MICHAEL AND JUANITA KOCHECK  
TO MOTION TO EXTEND TIME TO ASSUME OR REJECT LEASES**

TO: THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE:

Michael and Juanita Kocheck (the "Kochecks"), by and through counsel, hereby object to the Motion For Order Pursuant to Section 365(d)(4) of the Bankruptcy Code Extending the Time Within Which the Debtors-in-Possession Must Elect to Assume or Reject Their Unexpired Leases of Nonresidential Real Property, dated September 22, 2000 (the "Motion") (Doc. No. 330) filed by the above-referenced debtors and debtors-in-possession (collectively, the "Debtors"). In support of its objection, the Kochecks state:

## **BACKGROUND**

### **A. Procedural History**

1. On May 4, 2000 (the "Petition Date"), each of the 132 Debtors filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

2. Pursuant to the Court's Order, the Debtors' cases are being administered jointly. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. On June 16, 2000, Debtors filed a motion in which they sought an extension of time in which to assume or reject unexpired leases of nonresidential properties (the "First Extension Motion")(Doc. No. 83). One of the primary justifications for relief sought by the First Extension Motion was that the Debtors had yet to develop their strategic business plan by which they could ascertain which leases would play a role in the Debtors' future operations. *See* First Extension Motion ¶¶ 9, 10.

4. The Kochecks submitted an Objection to the First Extension Motion (Doc. No. 115), as did other creditors.

5. After conducting a hearing on the First Extension Motion, the Court, on July 27, 2000, entered an order extending until October 9, 2000, the time within which the Debtors must elect to assume or reject their unexpired leases of nonresidential real property (the "First Extension Order")(Doc. No. 208).

6. This Court has jurisdiction over this case and the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

### **B. The Lease with the Kochecks**

7. Pursuant to a written lease agreement (the "Lease"), the Kochecks are the landlords of Cincinnati Family Golf Centers, Inc. ("CFGC")(one of the Debtors), with respect to certain non-residential real property located in Fairfield, Ohio (the "Premises").

8. On the Premises, CFGC operates a golf and recreational facility (the "Facility"), including a golf driving and instructional range, a golf pro shop, a miniature golf course, and baseball batting cages.

9. CFGC's sole business is the operation of the Facility.

10. Pursuant to the Lease, CFGC is obligated to provide rental payments to the Kochecks based, in part, upon the gross income collected by CFGC from its operations of the Facility.

11. During the past year, CFGC has undertaken or failed to undertake certain actions in its operations of the Facility such that these acts or omissions have impacted the gross income collected by CFGC from its operations of the Facility, and, thus, the rent provided to the Kochecks. For example, CFGC closed the operation of all of the batting cages at the Facility during August 2000 and only 3 of 9 such batting cages were ever operating this year. Additionally, CFGC substantially decreased the area dedicate to the pro shop.

12. The revenues generate from the Facility (upon which the rent is based) for the period January to September 2000 is only 78% of the revenues generated for the same period in 1999.

**C. The Motion**

13. In the Motion, the Debtors (and CFGC, in particular) seek a second extension of their statutory deadline to assume or reject numerous unexpired leases (including, the Lease).

## **THE KOCHECKS' OBJECTION TO THE MOTION**

### **The Debtors Have Not Established Cause under Section 365(d)(4) of the Bankruptcy Code To Justify a Second Extension of their Deadline to Assume or Reject the Leases**

14. The primary purpose of section 365(d)(4) of the Bankruptcy Code is “to protect lessors . . . from delay and uncertainty by forcing a trustee or a debtor in possession to decide quickly whether to assume unexpired leases.” *In re American Healthcare Management, Inc.*, 900 F.2d 827, 830 (5th Cir. 1990); *see also In re Channel Home Center, Inc.*, 989 F.2d 682, 687 (3d Cir. 1992). To obtain an extension beyond the 60-day statutory limit or for an additional extension after being granted an initial extension, a debtor is required to establish “cause”. *See In re Columbus One Parcel Service, Inc.*, 138 B.R. 194, 195 (Bankr. S.D. Ohio 1992); *In re Muir Training Technologies, Inc.*, 120 B.R. 154, 158 (Bankr.S.D. Cal. 1990); *In re Wedtech Corp.*, 72 B.R. 464, 469 (Bankr. S.D.N.Y. 1987). The “cause” requirement is not one to be lightly dismissed or blindly applied. *Wedtech Corp.*, 72 B.R. at 469.

15. In determining whether cause exists, courts generally examine a number of factors including whether the leases are primary assets central to the debtor’s reorganization; whether the debtor has had time to intelligently appraise its financial situation and to determine to assume or reject the leases; whether the debtor has failed or is unable to formulate a plan when it has had more than enough time to do so; whether the case is exceptionally complex and involves a large number of leases; and whether any other factors bearing on whether the debtor has had a reasonable amount of time to decide to assume or reject the leases. *See Escondido Mission Village, L.P. v. Best Products Co.*, 137 B.R. 114, 117 (S.D.N.Y. 1992); *Columbus One*, 138 B.R. at 195; *Wedtech Corp.*, 72 B.R. at 469.

16. An examination of these factors demonstrates that the Debtors have failed to establish “cause” in order to justify a second extension of the statutory deadline. The Debtors contend that a strategic business plan must still be developed in order for them to determine whether to assume or reject the leases of nonresidential real property. *See Motion ¶ 15.* This

was the same justification put forth when the Debtors sought their first extension of the statutory deadline.

17. Furthermore, the rationale put forth by the Debtors for an extension of time to assume or reject leases was rejected by the United States District Court for the Southern District of New York in *Escondido Mission Village L.P. v. Best Products Co.*, 137 B.R. 114 (S.D.N.Y. 1992). District Judge Sweet, in vacating the Bankruptcy Court's 365(d)(4) extension and remanding the matter to the bankruptcy court, stated: "[t]he focus on [the debtor's] desire to formulate and test its business plan at the expenses of the shopping center owners, and without a proper consideration of their concerns, is improper under § 365(d)(4)." *Id.* at 117; *see also Net Realty Holding Trust v. R.H. Macy & Co., Inc. (In re R.H. Macy's Co.)*, No. 92 Civ. 3799, 1992 WL 322288, \*2 (S.D.N.Y. Oct. 28, 1992) ("it is improper for the Debtor's landlords as a group to be forced to wait while the Debtors formulate their business plans to decide which leases are rejected and which are assumed"). Therefore, the Kochecks contend that the Debtors' rationale for this second extension is deficient and "cause" does not exist to permit such a second extension of the period within which the Debtors must assume or reject the Leases.

18. With respect to the lease between the Kochecks, and CFGC, the Debtors have failed to provide any justification as to why they need additional time to ascertain whether the Premises are necessary to effect a reorganization. While the Lease is obviously a primary asset of CFGC, CFGC should have been able, within the initial period (let alone the additional time already granted), to appraise intelligently its financial situation and the viability of an effective reorganization. The operations of CFGC are such that the case is not complex. As such, CFGC

should have been able to ascertain by now whether the Lease is necessary to effect a reorganization.

In short, the Debtors have provided no rationale or basis to justify an additional extension of time.

Dated: October 9, 2000

Respectfully submitted,

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